COURT NO. 2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 1535 of 2001

U.P. State Road Transport Corporation
… Appellant.

Versus

S. Malkiat Singh and others … **Respondents.**

Mr. A.N.Sharma, learned counsel for the appellant.
Mr. B.P. Nautiyal, learned counsel for the respondents.

Coram : Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

Date August 03, 2004.

This appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988 against the judgment and Award, dated 25.7.2001 passed in M.A.C. Petition No. 156 of 1995, by Motor Accident Claims Tribunal/Addl. District Judge, V Fast Track Court, Dehradun ***(in short the Tribunal),*** whereby the learned Tribunalhas awarded Rs. 1,69,500/- along with interest @ 9% per annum to the claimant-respondent nos. 1 to 3.

Brief facts, giving rise to the present appeal, are that on 8.7.1995, Km. Harinder Kaur was coming back from Hemkund Sahib by Jeep No. PB 06 A-0339 along with Smt. Jaswant Kaur, S.Suchha Singh, S. Lehmabar Singh, S. Jaswinder Singh, S. Balwinder Singh and Smt. Surjeet Kaur and were proceeding towards Ponta Sahib on way back to Ropar. When they reached near village Dhookot, Chakrata Road, few kilometers before Sahaspur (Dehradun), a bus No. U.P. 07-0137 belonging to U.P.S.R.T.C., which was coming from the opposite direction and was being driven rashly and negligently by its driver, hit the

aforesaid Jeep resulting in an accident causing death of Km. Harinder Kaur, Smt. Jaswant Kaur, S. Suchha Singh, S. Lehmbar Singh, S. Jaswinder Singh, S. Balvinder Singh and Smt. Surjeet Kaur. Consequently, Sri Malkiat Singh, Km. Amandip Kaur and Master Jaspal Singh, the claimants preferred petition under Section 166 of the Motor Vehicles Act ***(in short the Act)*** claiming Rs. 10,00,000/- by way of compensation for the death of their sister Km. Harvinder Kaur, who died in the alleged motor accident. As mentioned earlier, the claim petition was registered as Motor Accident Claim Petition No. 156 of 1995.

Opposite Party No.2, the appellant, contested the petition by filing its written statement on the ground that the said Jeep was not hit by the bus; but the bus was hit by the Jeep. The appellant O.P.No.2 denied that the bus was not being driving rashly and negligently and that it was being driven at high speed, rather the jeep in question was being driving rashly and negligently by its driver. It was also stated that on 8-7-95, the bus No. UP 07E-0137 was being driven by Raj Kumar Agarwal from Ponta Sahib to Dehradun. When it reached Sahaspur, the driver was feeling unwell, therefore, considering the inconvenience that may be caused to the passengers, Sri Shrawan Kumar, driver who was available there, was requested to drive the bus from there to its destination, Dehradun. The said driver agreed to drive the bus and he was driving the vehicle in normal speed. However, the bus took some passengers from village Selakhi and from that village, the bus had to go upward at the place known as ‘Farm’ near Dhoolkot village. Then suddenly, the Jeep bearing no. PB 06A/0339 appeared coming from the opposite direction in a very fast speed. It was being driven rashly and negligently by its driver on the downward slope. It was also pleaded that at that time it was raining and seeing the bus, the driver of the jeep lost control. The bus driver swerved thebus to extreme left side and its front wheel also went into Kuchha drain (muddy portion of the road) on the left

side; but the vehicle could not be saved and the Jeep driver collided with the bus on its right front and it was turned back after collision. The main ground taken by the answering O.P. was that the said accident in question took place due to rash and negligent driving on the part of jeep driver and not account of rash and negligent driving by the bus driver, hence the appellant was not at all responsible for the accident. It was further pleaded that the amount of compensation was highly excessive, exorbitant and without basis and the claimants were not entitled to any compensation whatsoever as the bus was neither driven rashly and negligently nor in high speed and lastly it was stated that even if the claimants were entitled to the compensation, if any, the responsibility rests on the owner and the Insurance Company of the Jeep in question.

The O.P.No.2-A, Sri Raj Kumar Agarwal has also contested the claim by filing written statement and has taken similar stand as pleaded by the appellant-Opposite Party No.2.

The O.P. No.3, New India Assurance Company (Respondent No.4) also filed written statement and it has been pleaded on behalf of the Insurance Company that the claim petition was not legally maintainable against it. It was further pleaded that the total sitting capacity of the Jeep was for six persons, while at the time of accident, as many as 12 persons were travelling in the Jeep and the Jeep driver was not holding a valid driving licence. As the vehicle was over-loaded at the time of accident and the Jeep driver was not holding a valid driving licence, hence the answering Opposite Party-respondent no.4 was not liable to pay any compensation, as the insured had violated the terms and conditions of the Policy and there was no negligence on the part of the driver of the Jeep. Plea of mis-joinder of necessary party was also raised by the Opposite Party No.3.

Learned Tribunal, after examining the pleadings of the parties, framed the following Issues:-

1. ***Whether the accident in question took place due to rash and negligent driving of Bus No. UP 07E-0137 by its driver causing death of Km. Harinder Kaur?***
2. ***Whether the petition is bad for non-joinder of the driver on the Bus?***
3. ***Whether the accident in question took place due to rash and negligent driving of Jeep No. PB-06A-0339 by its driver?***
4. ***Whether the driver of the Jeep was not holding a valid driving licence for driving the Jeep? If so, its effect?***
5. ***Whether the Insurance Company is not liable to pay any compensation on account of the violation of the terms and condition of the policy?***
6. ***Whether the petition is bad for mis-joinder of necessary parties?***
7. ***To what amount of compensation, the petitioners are entitled and from which of the O.Ps.?***

On behalf of the claimants, Sr. Malkiat Singh, Narender Singh and Mohinder Singh were examined as A.P.W.1 to A.P.W. 3, while on behalf of the Opposite Parties O.P.W.1 Raj Kumar Agarwal and O.P.W. 2 Sharvan Kumar were produced before the learned Tribunal.

The learned Tribunal, after hearing both the parties and having gone through the record, took Issue Nos. 1 and 3 together for decision. The main point for consideration before the learned Tribunal on these Issues was whether the accident in question took place due to rash and negligent driving of the bus driver or that of the jeep driver. On the basis of the F.I.R. lodged on the date of the accident, i.e. 8-7-1995 and the post mortem report in respect of death of Km. Harinder Kaur, etc. coupled with the statement of claimants' witnesses Mohinder Singh etc., the learned Tribunal was of the view that the alleged accident was the result of the rash and negligent driving of bus driver. The learned Tribunal also observed that the evidence of Sri Sharvan Kumar was not convincing as he had not even informed his Department about the

accident having taken place nor he could disclose the reason therefore. This witness even could not muster courage to lodge an F.I.R. of the accident at the police station against the alleged offending Jeep driver. Taking into consideration all the facts and circumstances, the learned Tribunal found the evidence of the petitioners trustworthy and it has held on Issue Nos. 1 and 3 that the accident in question was the result of negligence on the part of the bus driver. Learned Tribunal also took up Issue Nos. 2 and 6 for decision together as preliminary Issues and the same were disposed of vide order dated 11.12.1996, whereby Issue No. 6 was decided in favour of the claimants and it was held that petition was not bad for mis-joinder of necessary parties, while Issue No.2 was decided against the claimants and consequently, driver of the bus in question was impleaded as O.P. No.2. The learned Tribunal also took up Issue Nos. 4 and 5 together for decision and considering the fact that since no evidence was led by the Insurance Company to the contrary and valid driving licence of the driver of the Jeep being on record, coupled with the findings recorded on Issue Nos. 1 and 3, the learned Tribunal held that no liability could be fastened on the New India Assurance Company, respondent no. 4, the insurer of the Jeep in question. On Issue No. 7, the learned Tribunal came to the conclusion that on the date of accident , the deceased had completed 16 years of age. The multiplier covering the present situation was of 16 as prescribed by II Schedule appended to Motor Vehicles Act. The learned Tribunal has relied on the principle laid down by the Apex Court in ***Haji Jainulla's Case (1994, A.C.J., 993 (Supreme Court).*** Accordingly, the Tribunal had applied the multiplier of 16 taking the notional income of the deceased to be Rs. 15,000/- per annum and consequently, awarded compensation to the tune of Rs. 1,69,500/- along with the interest as mentioned earlier.

The appellant has assailed the impugned judgment *firstly* on the ground that the accident in question was the result of

negligence of the Jeep driver, and not the negligence of the driver of the bus in question and *secondly*, that the compensation awarded by the learned Tribunal is excessive and not based on the evidence on record.

We have gone through the entire material available on record including the impugned judgment and Award. From the perusal of the record, it is clear that the accident in question resulting in the death of the deceased was the result of the rash and negligent driving by the driver of the bus. As already mentioned earlier, the driver of the bus at the time of accident, Sri Sharvan Kumar, or Raj Kumar Agarwal, who had appeared as witnesses for the opposite parties never tried to lodged the First Information Report against the Jeep driver. Moreover, said Sharvan Kumar had not even informed his own Department about the accident having been occurred with his bus, therefore, we do not find any reason to take a different view that the accident in question was the result of negligence of Jeep driver. Learned Tribunal has already discussed the matter elaborately in its judgment. Accordingly, the first contention of the appellant has no force.

As regards the second contention raised on behalf of the appellant before us that the amount of compensation awarded by the Tribunal was excessive and it was argued before us that the multiplier of 16 applied by the learned Tribunal was improper. Considering the entire material before us, it is clear that the deceased being 16 years of age and a student at the time of his death, notional income as per judgment of the Apex Court, referred to above, was taken into consideration to work out the amount of compensation in the instant case and, as mentioned earlier, the learned Tribunal has applied the appropriate multiplier of 16, as per principle laid down in Haji Jainulla's Case (supra) read with II Schedule appended to Motor Vehicles Act. We also agree with the conclusion arrived at by the learned Tribunal that the total compensation in the case in hand comes to Rs. 1,69,500/-. The

impugned Award of compensation has been correctly worked out taking into consideration the entire evidence before the learned Tribunal. For the above discussion, the second contention, too, is not at all acceptable.

In our opinion, there is nothing on record so as to warrant any interference in the judgment and award under appeal. We find no merit in the appeal, which deserves to be dismissed.

In the result, the appeal is dismissed. The judgment and Award under appeal is upheld. No order as to costs.

The amount deposited in this court shall be transmitted to the Motor Accident Claims Tribunal concerned.

(B.S. Verma, J.) **(P.C. Verma, J.)**

RCP